

N A R U C



Jim Sullivan
President
Alabama Public Service Commission

Bob Rowe
First Vice President
Montana Public Service Commission

Nora Mead Brownell
Second Vice President
Pennsylvania Public Utility Commission

Margaret A. Welsh
Executive Director

National Association of
Regulatory Utility
Commissioners

1100 Pennsylvania Ave., N.W.
Suite 603
Washington, D.C. 20004

MAILING ADDRESS
Post Office Box 684
Washington, D.C. 20044-0684

202.898.2200
202.898.2213 Fax
<http://www.naruc.org>

EX PARTE OR LATE FILED

March 3, 1999

Secretary
Office of Secretary
Federal Communications Commission
445 12th Street, SW
Washington DC 20554

RECEIVED

MAR 4 1999

RE: Notice of Ex Parte Comments: - Two Originals filed in the following proceedings: *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996* (CC Docket No. 96-98) and *In the Matter of the Federal State Joint Board on Universal Service* (CC Docket No. 96-45)

Dear Madam Secretary:

I respectfully request any waivers needed to file this notice out-of-time. Leading up to and during NARUC's recent 1999 Winter meetings in Washington, D.C., I had a number of conversations with FCC representatives concerning appropriate FCC action in the wake of the recent January 25, 1999 Supreme Court decision. I discussed generally flexibility with TELRIC, and my specific concern about any flash cut re: presubscription and deaveraging. These conversations also reached arguments and concerns raised in both (a) the contents of NARUC's recent resolution, which was filed in this proceeding yesterday as part of several ex partes from NARUC's Assistant General Counsel, and (b) in letter from me to FCC Chairman William Kennard, which is also being filed today in this proceeding as an ex parte. The dates and persons contacted follow:

- February 12, 1999: Voice mail to Jim Casserly, Kathy Brown, Larry Strickling, Lisa Zaina, Paul Misener, Kyle Dixon. Phone conversation with Commissioner Tristani.
- February 16 1999: Meeting at the FCC with Kathy Brown, Larry Strickling, and Bob Pepper.
- February 17, 1999: Meeting with Commissioner Powell and Paul Jackson. During this conversation, I also briefly discussed the high cost fund.
- February 22, 1999 Meeting with Commissioner Furchtgott-Roth.
- February 24, 1999 Meeting with Chairman Kennard, Larry Strickling. During this conversation I also briefly discussed the high cost fund.
- February 25, 1999 Meeting with Commissioner Ness and Linda Kinney

If you have any question about this letter, please do not hesitate to contact me at 406.444.6167.

Sincerely,

Bob Rowe

No. of Copies rec'd
List ABCDE

241

N A R U C



Jim Sullivan
President
Alabama Public Service Commission

Bob Rowe
First Vice President
Montana Public Service Commission

Nora Mead Brownell
Second Vice President
Pennsylvania Public Utility Commission

Margaret A. Welsh
Executive Director

**National Association of
Regulatory Utility
Commissioners**

1100 Pennsylvania Ave., N.W.
Suite 603
Washington, D.C. 20004

MAILING ADDRESS
Post Office Box 684
Washington, D.C. 20044-0684

202.898.2200
202.898.2213 Fax
<http://www.naruc.org>

March 3, 1999 **RECEIVED**

Hon. William Kennard, Chairman
Federal Communications Commission
The Portals
445 12th Street, SW
Washington DC 20554

MAR 4 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

RE: NARUC's Request for a Stay of the FCC's De-Averaging Rules

Ex Parte Comments: Two Originals filed in the following docket: *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996* (CC Docket No. 96-98)

Dear Chairman Kennard:

Under your leadership the Federal Communications Commission and State commissions are working toward the same goal, bringing the benefits of competition and universal service to all Americans. I value our partnership.

I write to follow up on our very productive discussions concerning implementation of Iowa v. FCC, and specifically to discuss the potential stay of geographical rate deaveraging. I conclude by describing one approach to deaveraging.

A. General approach.

As you know, the National Association of Regulatory Utility Commissioners (NARUC) passed several resolutions this week directly related to this topic. These include a resolution on the unbundled network elements remand, a resolution on Iowa v. FCC implementation generally, and a resolution adopting a State-federal "Magna Carta."

The resolution concerning Iowa v. FCC implementation resolved as follows:

RESOLVED, that the Board of Directors of the National Association of Regulatory utility Commissioners, assembled at its 1999 Winter Meeting in Washington, D.C. congratulate the FCC on its recent victory in the Supreme Court and applaud the outreach from every level of the agency to the States seeking input on how to manage the recent re-vitalization of rules that have been stayed for almost three years; and be it further

RESOLVED, that the NARUC opposes any legal challenge to forward-looking cost methodologies; and be it further

RESOLVED, with respect to toll dialing parity, the FCC should

- *Expeditionously establish a new deadline for States that have not implemented dialing parity; and*
- *Clarify that States that implement dialing parity have the authority to condition customer default to the incumbent local service provider on the requirement that customers have a reasonable opportunity to change among all service providers; and be it further*

RESOLVED, that the FCC should expeditionously stay its minimum three zone rule pending further evaluation in the context of the FCC and State implementation of the Act and related issues for those states that have not taken such action

Similarly, the State-Federal Magna Carta adopted pro-competition and pro-consumer policies, recognizing all the avenues of competitive entry outlined in the Telecommunications Act. The Magna Carta describes the FCC and the State commission's complimentary strengths, and includes the following language:

FCC actions affecting States and U.S. territories should be undertaken in a manner that is consistent with its statutory obligations, while mindful of States' and U.S. territories' unique knowledge of local conditions and experience in regulating the local market. In areas where national standards are appropriate, the FCC will strive to implement them in a way that encourages state and U.S. territory input to the fullest extent possible. The parties recognize the value of diversity and of experimentation in many circumstances. The States and the U.S. territories will support the FCC in its efforts to meet the challenges presented by the implementation of the Act to the fullest extent possible.

Since the Supreme Court decision, NARUC has worked with its members to develop baseline information concerning State pricing decisions. This information will be shared with the FCC. In general, we know that States have used forward looking prices, did not rely on proxies, and made other specific decisions based on the records before them. The information collected to date suggests that States used the FCC rules stayed by the Eighth Circuit as a starting point for their own deliberations. As a result of the States' flexible administration and experimentation, we now know much more about wholesale pricing than we did then, or than if the rules had not been stayed.

In general, I hope we can agree to preserve much of that flexibility, along with the wisdom gained. Much of the FCC's response to the Iowa decision has been consistent with this approach, and has been quite encouraging. As we develop more information, additional informal and formal consultation between the FCC and state commissions will be valuable.

B. Wholesale geographical deaveraging.

I request an extended stay of geographical deaveraging as a necessary accommodation to states working to reconcile wholesale rates, universal service, and retail rates. Such a stay also will provide powerful evidence of the Federal Communications Commission's commitment to cooperative federalism and will lay the basis for further cooperation on wholesale rate issues. My request does not suggest that the FCC abandon its policy in favor of deaveraging.

Of the thirty-six states from which we have information so far, approximately thirteen have geographically deaveraged wholesale rates.¹ The remainder, which includes both large and small States, have not yet done so. These decisions were thoughtfully reached based on direct experience with the local markets, often specifically including a need to coordinate deaveraged wholesale prices with implementation of the federal high cost fund for large companies. These State commission decisions should not be summarily disregarded.

As both you and I have said in different ways, the regulators and the industries now enjoy a window within which to cooperate in building the foundation for increased local competition. I am concerned that some of the advocacy against a stay of deaveraging may undermine that foundation. In many instances, for example, interexchange carrier concerns may be addressed in other ways without undermining federal-state cooperation. Several specific points follow:

- Concerns about Section 271 matters and RBOC in-region entry should not detract from moving forward with flexible implementation of the wholesale pricing requirements under Section 251 and 252. For example, the United States Department of Justice, whose recommendation enjoys substantial weight, outlined how it would review pricing under Section 271. The DOJ stated it would require forward-looking pricing, some expectation of reasonable current and future prices, and either geographical deaveraging or a plan to move toward deaveraging. Notably, the DOJ standard was set forth while TELRIC was stayed by the Eighth Circuit and while the FCC was barred by the court from reviewing pricing under Section 271.
- Wholesale deaveraging without resolution of the federal large company high cost fund has enormous potential to disrupt retail rates, which could itself be contrary to the Telecommunications Act's requirements of "just, reasonable, and affordable" rates and of "reasonable comparability" of urban and rural rates and service.
- A narrow administrative stay is generally preferable to a broad court-ordered stay, as has been sought by several parties at the Eighth Circuit. An administrative stay preserves the agency's flexibility and control of its proceedings. A judicial stay should be an unfortunate last resort.

¹ In an ex parte filed March 2, 1999, AT&T includes a table showing a total of twenty jurisdictions which have deaveraged to three zones. It is hubristic to imply that the sixty percent of jurisdictions which did not immediately deaverage lacked valid reasons for their actions.

- Many states are limited in their ability to move quickly to establish deaveraged rates both by due process and administrative procedure act requirements and by severe resource constraints. Some states may face specific statutory constraints. I believe that the FCC itself would be hard-pressed to turn around a major policy question in a period of several months.

The foregoing leads to a specific proposal. As one of several possible approaches, I suggest affirming the FCC's policy in favor of deaveraging, but suspending the requirement that states deaverage until six months after a final FCC order concerning the large company high cost fund. This is consistent with DOJ's approach, provides clear policy direction, and establishes the necessary linkage between various parts of the Telecommunications Act.

I appreciate both your directness in stating your views and your sincere commitment to this partnership. I hope and I intend that we go forward in that spirit.

Sincerely,

A handwritten signature in black ink, appearing to read 'Bob Rowe', with a long, sweeping horizontal line extending to the right.

Bob Rowe
Chairman,
NARUC Telecommunications Committee

cc: The Honorable Commissioner Susan Ness
The Honorable Commissioner Michael Powell
The Honorable Commissioner Gloria Tristani
The Honorable Commissioner Harold Furchtgott-Roth